

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KIMOTHY R. McCRAY,)	
)	
Plaintiff(s),)	No. C 06-6396 CRB (PR)
)	
vs.)	ORDER OF DISMISSAL
)	
EDWARD J. CADEN, et al.,)	
)	
Defendant(s).)	
_____)	

Plaintiff, a prisoner at Kern Valley State Prison and frequent litigant in federal court, filed a pro se civil rights complaint under 42 U.S.C. § 1983 alleging harassment and retaliation by correctional staff. Plaintiff also sought to proceed in forma pauperis under 28 U.S.C. § 1915.

Per order filed on November 13, 2006, the court found that 28 U.S.C. § 1915(g) bars plaintiff from proceeding in forma pauperis in this action because plaintiff: (1) has had three or more prior prisoner actions dismissed by a federal district court on the grounds that they are frivolous, malicious, or fail to state a claim upon which relief may be granted; and (2) is not seeking relief from a danger of serious physical injury which is imminent at the time of filing. Nov. 13, 2006 Order at 2 (citing cases).

1 Pursuant to the law of the circuit, plaintiff nonetheless was afforded an
2 opportunity to persuade the court that § 1915(g) does not bar pauper status for
3 him. Id. (citing Andrews v. King, 398 F.3d 1113, 1120 (9th Cir. 2005)). The
4 court gave plaintiff 30 days to "show cause why § 1915(g) does not bar pauper
5 status for him," and explained that "[f]ailure to show cause, or pay the requisite
6 \$ 350.00 filing fee, within the designated time will result in the dismissal of this
7 action without prejudice to bringing it in a new paid complaint." Id. at 2-3.

8 Plaintiff did not file a response to the court's order. He did file a "motion
9 to proceed with civil rights complaint . . . in forma pauperis" in an accompanying
10 case, however. See McCray v. Caden, No. C 06-3963 CRB (PR) (N.D. Cal. filed
11 June 27, 2006). In it, he simply reiterates the allegations of both of his
12 complaints and in no persuasive manner shows that § 1915(g) does not bar
13 pauper status for him. The motion is DENIED and the action is DISMISSED
14 without prejudice to bringing it in a paid complaint.

15 The clerk shall enter judgment in accordance with this order and close the
16 file. No fee is due.

17 SO ORDERED.

18 DATED: December 18, 2006

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20 CHARLES R. BREYER
21 United States District Judge
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